

Article 3.P:

CB-O, Chesapeake Bay Preservation Overlay District

Article 3.P:**CB-O, Chesapeake Bay Preservation Overlay District****A. Authority**

1. This Ordinance is enacted under the authority of Section 10.1-2100 et seq. (The Chesapeake Bay Preservation Act) and Section 15.1 - 15.2-2283, of the Code of Virginia. Section 15.1 states that zoning ordinances may “also include reasonable provisions, not inconsistent with applicable state water quality standards, to protect surface water and groundwater as defined in Section 62.1-255.”

Revision Reference: Ord. of 4/6/04

B. Allowable Land Use and Conflict with other regulations

1. In any case where the requirements of this article conflict with any other provision of the Town of Smithfield Code or existing state or federal regulations, whichever imposes the more stringent requirements, these shall apply.
2. In the RMA, permitted uses, special uses, accessory uses, and special provisions and regulations shall be established by the underlying zoning district, unless specifically modified by the requirements set forth herein.
3. In the RPA, development may be allowed only if it (1) is water-dependent; (2) constitutes redevelopment; or (3) constitutes development or redevelopment within a designated Intensely Developed Area; (4) is a new use subject to the provisions of Section G.3, subsection C.2 of this Article; (5) is a road or driveway crossing satisfying the conditions set forth in Section B, subsection 3.c of this Article or (6) is a flood control or stormwater management facility satisfying the conditions set forth in subsection 3.d of this Article.
 - a. A new or expanded water dependent facility may be allowed provided that the following criteria are met:
 1. It does not conflict with the Comprehensive Plan;
 2. It complies with the performance criteria set forth in Section G of this Article;
 3. Any nonwater-dependent component is located outside of the RPA; and

4. Access to the water-dependent facility will be provided with the minimum disturbance necessary. Where practicable, a single point of access will be provided.
- b. Redevelopment outside of locally designated Intensely Developed Areas sites shall be permitted in the Resource Protection Area only if there is not increase in the amount of impervious cover and no further encroachment within the RPA and it shall conform to the stormwater management requirements outlined under Section G, subsection 2.d of this Article and the erosion and sediment control requirements outlined under Section G, subsection 2.f.2 of this Article.
 - c. Roads and driveways not exempt under Section I.3 of this Article and which, therefore, must comply with the provisions of this Article, may be constructed in or across RPAs if each of the following conditions are met:
 1. The Zoning Administrator makes a finding that there are no reasonable alternatives to aligning the road or drive in or across the RPA;
 2. The alignment and design of the road or driveway are optimized, consistent with other applicable requirements, to minimize encroachment in the RPA and minimize adverse effects on water quality;
 3. The design and construction of the road or driveway satisfy all applicable criteria of this Article;
 4. The Zoning Administrator reviews the plan for the road or driveway proposed in or across the RPA in coordination with the plan of development requirements as required under Section I.2 of this Article or subdivision plan.
 - d. Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed may be allowed in the RPA provided that the following conditions are met:
 1. The Town of Smithfield has conclusively established that the location of the facility within the RPA is the optimum location;
 2. The size of the facility is the minimum necessary to provide necessary flood control, stormwater treatment, or both;

3. The facility must be consistent with a stormwater management program that has been approved by the Chesapeake Bay Local Assistance Board as a Phase I modification to the Town of Smithfield's stormwater management program;
4. All applicable permits for construction have been obtained from the appropriate state and federal agencies;
5. The Town of Smithfield has approved the project prior to construction; and
6. Routine maintenance will be performed to assure that these facilities continue to perform as designed.
7. It is not the intent of this subdivision to allow a best management practice that collects and treats runoff from only an individual lot or some portion of the lot to be located in a Resource Protection Area.

Revision Reference: Ord. of 4/6/04;12/6/05

C. Purpose and Intent

1. These regulations are designed to protect and improve the water quality of the Chesapeake Bay, its tributaries, buffer areas and other sensitive environmental lands by minimizing the potential adverse effects of human activity upon these areas. The regulations are intended to encourage and promote:
 - a. Protection of existing high-quality state waters and restoration of all other State waters to a condition or quality that will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them;
 - b. Safeguarding the clean water of the Commonwealth from pollution;
 - c. Prevention of any increase in pollution;
 - d. Reduction of existing pollution; and

- e. Promotion of water resource conservation in order to provide for the health, safety and welfare of the present and future citizens of the Town and region.
2. This article, along with other applicable sections of this ordinance and the subdivision ordinance is intended to address management practices for areas identified by the Comprehensive Plan and the Chesapeake Bay Preservation Area Map which comprise one or more of the following physical attributes: steep slopes, hydric and highly permeable soils, highly erodible soils, vulnerable ground cover, rare ecological areas, aquifer recharge areas, tidal and non-tidal wetlands, rivers, stream valleys, marshes, floodplains, established man-made drainageways, other lowlands with sensitive environmental characteristics and public rights of way and easements.
3. It is not the intent of this subdivision to allow a best management practice that collects and treats runoff from only an individual lot or some portion of the lot to be located in a Resource Protection Area.
4. This article is also intended to support the goals of the Chesapeake Bay Preservation Act and the Town's Comprehensive Plan by encouraging both the preservation of environmentally sensitive areas and the development of suitable areas within the Town, as identified on the Future Land Use Map.

Revision Reference: Ord. of 4/6/04

D. Establishment of the District and Land Use Management Classifications

1. The Chesapeake Bay preservation areas are delineated on the Town's Chesapeake Bay Preservation Area Map as one of the following: (a) Resource Protection Areas (RPAs), (b) Resource Management Areas (RMAs) or (c) Intensely Developed Areas (IDAs). These mapped designations show the general location of RPA, RMAs and IDAs and should be consulted by persons contemplating development. Such land and the district classifications shall be shown on the map designated as the Chesapeake Bay Preservation Area (CBPA) District Map of Smithfield, Virginia, and approved by Town Council. This CBPA district map and all notations and other explanatory matter shown thereon, pertaining to such districts, shall be a part of this Ordinance as is fully described herein. The Chesapeake Bay Preservation Area Map is incorporated by reference into the Official Zoning Map for the Town of Smithfield.
2. The Resource Protection Areas, RPAs, include all sensitive environmental lands, wetlands and waters, as well as a 100-foot buffer around them, which have been

determined for protection by the Town due to their vulnerable characteristics and critical location within the Chesapeake Bay watershed. The buffer area is designed to retard runoff, prevent erosion and filter non-point source pollutants from runoff. It is designed to achieve a level of 75% reduction in sediments and 40% reduction of nutrients.

The RPAs designated for protection of the quality of local and State waters include:

- a. Tidal wetlands.
 - b. Non-tidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow.
 - c. Tidal shores.
 - d. Repealed by Town Council on August 1, 2000.
 - e. Other sensitive lands at or near the shoreline that provide for the removal, reduction or assimilation of sediments, nutrients and potentially harmful or toxic substances in runoff.
 - f. A 100-foot vegetated buffer area located adjacent to and landward of the components listed in subsections (a) through (e) above and along both sides of any water body with perennial flow.
3. The Resource Management Area (RMA) is the area that is composed of all other lands, wetlands and waters not included in the RPA (including floodplains, highly erodible soils, highly permeable soils, etc.) and the IDA, within the incorporated boundaries of the Town of Smithfield, which have been determined by the locality to be significant lands in the Chesapeake Bay watershed and necessary to the protection of the quality of State waters.
 4. The Intensely Developed Areas, IDAs, are designated redevelopment areas of the Town which overlay portions of the RPAs or RMAs. IDAs were identified for redevelopment where, at the time of initial adoption of the CBPA little of the natural environment remained and at least one of the following conditions existed:
 - a. Development had severely altered the natural state of the area such that it has more than 50% impermeable surface;

- b. Public water and sewer was constructed and currently serves the area.
- c. Housing density was equal to or greater than 4 dwelling units per acre.

Revision Reference: Ord. of 4/6/04

E. Interpretation of District Boundaries

1. Any person(s) contemplating development activities within the Town of Smithfield shall consult the Chesapeake Bay Preservation Area District Map prior to engaging in such activity. District boundary lines are shown as approximate on the district map and vary from the actual location on the land. The actual location shall control and the applicant shall have the following responsibility:
 - a. Delineation RPA by the Applicant: The site-specific boundaries of the Resource Protection Area (RPA) shall be determined by the applicant through the performance of an environmental site assessment, subject to approval by the Zoning Administrator and in accordance with Article 3.P, Section I or Section H (WQIA). The CBPA District Map shall be used as a guide to the general location of Resource Protection Areas (RPA).
 - b. Delineation by the Zoning Administrator: The Zoning Administrator, when requested by an applicant wishing to construct a single family residence, may waive the requirement for an environmental site assessment and perform the delineation. The Zoning Administrator may use remote sensing, hydrology, soils, plant species, and other data, and consult other appropriate resources as needed to perform the delineation.
 - c. Resolution of Conflict of District Boundaries: Where the applicant has provided a site-specific delineation of the RPA, the Zoning Administrator will verify the accuracy of the boundary delineation. In determining the site-specific RPA boundary, the Zoning Administrator may render adjustments to the applicant's boundary delineation, in accordance with Article 3.P, Section I. In the event the adjusted boundary delineation is contested by the applicant, the applicant may seek relief, in accordance with the provisions of Article 3.P, Sections I and J.
2. If the boundaries of a Chesapeake Bay Preservation Area include only a portion of a lot, parcel, or development project, the entire lot, parcel, or development project shall comply

with the requirements of the Overlay District. The division of property shall not constitute an exemption from this requirement.

Revision Reference: Ord. of 4/6/04

F. General Development Requirements

1. Any land disturbing activity that exceeds an area of 2,500 square feet (including construction of all single family houses, septic tanks and drainfields, but otherwise defined in § 10.1-560 of the Code of Virginia shall comply with the requirements of Article 11.A of the Town of Smithfield Zoning Ordinance.
2. A water quality impact assessment shall be required for any proposed development or redevelopment within designated RPA, RMA or IDA (Refer to Article 3.P, Section H). The Planning and Zoning Administrator may waive this requirement within an RMA and IDA when it is apparent without further study that the unique characteristics of the site (such as the topography, soils, ground cover, location of wetlands and tidal shores) will prevent the proposed development from causing a degradation of water quality.
3. Intensely Developed Areas (IDA) shall serve as redevelopment areas. Areas so designated shall comply with all erosion and sediment control requirements and the performance standards for redevelopment in Article 3.P, Section G.

G. Performance Standards for Preservation Areas

1. It has been determined that natural ground cover, especially woody vegetation, is most effective in holding soil in place and preventing site erosion; indigenous vegetation, with its adaptability to local conditions without the use of harmful fertilizers or pesticides, filters stormwater runoff; and minimizing impervious cover enhances rainwater infiltration and effectively reduces stormwater runoff potential. In order to minimize erosion and sedimentation potential, reduce applications of nutrients and toxics, and increase rainwater infiltration the following performance standards are hereby established and shall apply to all development activities in the Preservation Area Districts. The purpose and intent of the following standards are set to set forth minimum requirements for development which will prevent a net increase in nonpoint source pollution from new development; reduce nonpoint source pollution from redevelopment; and reduce nonpoint source pollution from agricultural uses.

2. General Performance Standards for Development and Redevelopment in Preservation Areas
 - a. Limitations on Land Disturbance
 1. Land disturbance shall be limited to the area necessary to provide for the proposed use or development.
 - (a) In accordance with an approved site plan, the limits of land disturbance, including clearing or grading shall be defined by a construction footprint. These limits shall be clearly shown on submitted plans and physically marked on the development site.
 - (b) The construction footprint shall not exceed 60% of the site, unless relief is granted by the Planning Commission pursuant to Article 11, Section L.
 - (c) Ingress and egress during construction shall be limited to one access point, unless otherwise approved by the Zoning Administrator.
 - b. Preservation of Indigenous Vegetation
 1. Indigenous vegetation shall be preserved to the maximum extent possible consistent with the proposed development and in accordance with the Virginia Erosion and Sediment Control Handbook and Article 11.A.
 2. Existing tree over two (2) inches diameter at breast height (DBH) within the RPA shall be preserved outside the construction footprint, and existing trees over two (2) inches diameter breast height (DBH) within the RMA and outside the construction footprint shall be preserved to the maximum extent practicable in accordance with Section G.2.a of this ordinance. Diseased trees or trees weakened by age, storm, fire, or other injury may be removed.
 3. Clearing shall be allowed only to provide necessary access, positive site drainage, water quality Best Management Practices (BMPs), and the installation of utilities, as approved by the Zoning Administrator.

4. Prior to clearing or grading, suitable protective barriers, such as safety fencing, shall be erected five (5) feet outside of the dripline of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.

c. Limitation on Impervious Covers

1. Land development shall minimize impervious cover to promote infiltration of stormwater into the ground consistent with the use or development permitted.
2. Grid and modular pavements, permeable asphalt, or other semi-permeable or permeable materials, or other Best Management Practices to control storm water run-off and non-point source pollution, shall be used for any required parking areas, and low traffic areas and driveways, unless otherwise approved by the Zoning Administrator.
3. Parking spaces (Refer to Article 9, Sections C & D)

d. Sewage Disposal Site Requirements (Refer to Article 11, Section I.9)

e. Storm Water Runoff Requirements

1. For any development or redevelopment, stormwater runoff shall be controlled by the use of best management practices consistent with the water quality protection provisions of the Virginia Stormwater Management Regulations (4 VAC 3-20-10 et seq.). All BMP facilities require an approved maintenance agreement with the Town of Smithfield.
 - (a) For development, the post-development nonpoint source pollution runoff load shall not exceed the pre-development load, based on the CBLAD-provided default Tidewater average land cover of 0.45 lbs/acre/year of phosphorus (equivalent to approximately 16% impervious surface);

- (b) For sites within IDAs or other isolated redevelopment sites, the nonpoint source pollution load shall be reduced by at least 10 percent. The Zoning Administrator may waive or modify this requirement for redevelopment sites that originally incorporated best management practices for stormwater runoff quality control, provided the following provisions are satisfied:
 - (1) In no case may the post-development nonpoint source pollution runoff load exceed the pre-development load;
 - (2) Runoff pollution loads must have been calculated and the BMPs selected for the expressed purpose of controlling nonpoint source pollution;
 - (3) If best management practices are structural, evidence shall be provided that facilities are currently in good working order and performing at the design levels of service. The Zoning Administrator may require a review of both the original structural design and maintenance plans to verify this provision. A new maintenance agreement may be required to ensure compliance with this Ordinance.
- (c) For redevelopment, both the pre- and post- development loadings shall be calculated by the same procedures. However, where the design data is available, the original post-development nonpoint source pollution loadings can be substituted for the existing development loadings.

f. Applicability of Other Regulations

- 1. Prior to initiating grading or other on-site activities on any portion of a lot or parcel, all wetlands permits required by federal, state, and local laws and regulations shall be obtained and evidence of such submitted to the Zoning Administrator.
- 2. Notwithstanding on any other provisions of this Ordinance or exceptions or exemptions thereto, any land disturbing activity exceeding 2,500 square feet, including construction of all single-family houses, septic

tanks, and drainfields, shall be reviewed by the Zoning Administrator and comply with the requirements of Article 11.A.

3. Land upon which agricultural activities are being conducted shall have a soil and water quality conservation plan. Such plan shall be based upon the Field Office Technical Guide of the U.S. Department of Agriculture Natural Resource Conservation Service and accomplish water quality protection consistent with this Ordinance.

3. Buffer Area Requirements

- a. To minimize the adverse effects of human activities on the other components of Resource Protection Areas (RPA), state waters, and aquatic life, a 100-foot buffer area of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff shall be retained if present and established where it does not exist.
- b. The buffer area shall be located adjacent to and landward of other RPA components and along both sides of any water body with perennial flow. The full buffer area shall be designated as the landward component of the RPA, in accordance with Article 3.P, Section D. The 100-foot buffer area shall be deemed to achieve a 75 percent reduction of sediments and a 40 percent reduction of nutrients.
- c. Activity in the buffer area shall meet the following performance standards:
 1. In order to maintain the functional value of the buffer area, indigenous vegetation may be removed only to provide for reasonable sight lines, access paths, general woodlot management, and best management practices, including those that prevent upland erosion and concentrated flows of stormwater as follows:
 - (a) Trees may be pruned or removed as necessary to provide sight lines and vistas, provided that where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff.

- (b) Any path shall be constructed and surfaced so as to effectively control erosion.
- (c) Dead, diseased, or dying trees or shrubbery and noxious weeds may be removed and thinning of trees may be allowed, pursuant to sound horticultural practice incorporated into locally-adopted standards.
- (d) For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available technical advice and applicable permit conditions or requirements.
- (e) Existing tree over two (2) inches diameter at breast height (DBH) within the RPA shall be preserved outside the construction footprint, and existing trees over two (2) inches diameter at breast height (DBH) within the RMA and outside the construction footprint shall be preserved to the maximum extent practicable in accordance with Section G.2.a of this ordinance. Diseased trees or trees weakened by age, storm, fire, or other injury may be removed.

2. Permitted encroachments into the buffer area:

- (a) When the application of the buffer areas would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, the Zoning Administrator may permit encroachment into the buffer area in accordance with Article 3.P, Section G.3 and the following criteria:
 - (1) Encroachments into the buffer areas shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities;
 - (2) Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer

encroachment into the buffer area shall be established elsewhere on the lot or parcel; and

- (3) The encroachment may not extend into the seaward 50 feet of the buffer area.
- (b) When the application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded between October 1, 1989 and March 1, 2002, the Zoning Administrator may permit encroachments into the buffer area in accordance with Section I.2 of this Article and the following criteria:
 - (1) The lot or parcel was created as a result of a legal process conducted in conformity with the local government's subdivision regulations;
 - (2) Conditions or mitigation measures imposed through a previously approved exception shall be met;
 - (3) If the use of a best management practice (BMP) was previously required, the BMP shall be evaluated to determine if it continues to function effectively and, if necessary, the BMP shall be reestablished or repaired and maintained as required; and
 - (4) The criteria in subsection 2(a) (previous page) shall be met.
3. Redevelopment within IDA may be exempt from the buffer areas, in accordance with Article 3.P, Section G.3.
4. On agricultural lands the agricultural buffer area shall be managed to prevent concentrated flows of surface water from breaching the buffer area and noxious weeds from invading the buffer area. The agricultural buffer area may be reduced as follows:
 - (a) To a minimum width of 50 feet when at least one agricultural best management practice which, in the opinion of the local soil and water conservation district board, addresses the more

predominant water quality issue on the adjacent land – erosion control or nutrient management – is being implemented on the adjacent land, provided that the combination of the undisturbed buffer area and the best management practice achieves water quality protection, pollutant removal, and water resource conservation at least the equivalent of the 100-foot buffer area. If nutrient management is identified as the predominant water quality issue, a nutrient management plan, including soil test, must be developed consistent with the “Virginia Nutrient Management Training and Certification Regulations” (4 VAC 5-15 et seq.) administered by the Virginia Department of Conservation and Recreation.

- (b) To a minimum width of 25 feet when a soil and water quality conservation plan, as approved by the Peanut Soil and Water Conservation District, has been implemented on the adjacent land. Such plan shall be based upon the Field Office Technical Guide of the U.S. Department of Agriculture Natural Resource Conservation Service and accomplish water quality protection consistent with this Ordinance. The erosion control practices must prevent erosion from exceeding the soil loss tolerance level, referred to as “T”, as defined in the “National Soil Survey Handbook” of November 1996 in the “Field Office Technical Guide” of the U.S. Department of Agriculture Natural Resource Conservation Service. A nutrient management plan, including soil tests, must be developed consistent with the Virginia Nutrient Management Training and Certification Regulations (4 VAC 5-15) administered by the Virginia Department of Conservation and Recreation. In conjunction with the remaining buffer area, this collection of best management practices shall be presumed to achieve water quality protection at least the equivalent of that provided by the 100-foot wide buffer area.
- (c) The buffer area is not required for agriculture drainage ditches if the adjacent agricultural land has in place best management practices in accordance with a conservation plan approved by the Peanut Soil and Water Conservation District.

5. When agricultural or silvicultural uses within the buffer area cease, and the lands are proposed to be converted to other uses, the full 100-foot wide buffer area shall be reestablished. In reestablishing the buffer, management measures shall be undertaken to provide woody vegetation that assures the buffer functions are maintained or established.

Revision Reference: Ord. of 4/6/04;12/6/05

H. Water Quality Impact Assessments

1. The purpose of the Water Quality Impact Assessment is to:
 - a. Identify the impacts of proposed development on water quality and lands within RPAs and other environmentally-sensitive lands;
 - b. Ensure that, where development does take place within RPAs and other sensitive lands, it will be located on those portions of a site and in a manner that will be least disruptive to the natural functions of RPAs and other sensitive lands;
 - c. To protect individuals from investing funds for improvements proposed for location on lands unsuited for such development because of high ground water, erosion, or vulnerability to flood and storm damage;
 - d. Provide for administrative relief from the terms of this Ordinance when warranted and in accordance with the requirements contained herein; and
 - e. Specify mitigation which will address water quality protection.
2. A Water Quality Impact Assessment (WQIA) is required for:
 - a. Any proposed land disturbance, redevelopment, or development within a RPA, RMA or IDA including any buffer area encroachment in accordance with Article 3.P, Section F.2;
 - b. Any development in the Town of Smithfield RMA as deemed necessary by the Zoning Administrator. There shall be two levels of water quality impact assessments: a minor assessment and a major assessment.
3. Minor Water Quality Impact Assessment

- a. A minor water quality impact assessment pertains to land disturbance, development or redevelopment activity within a CBPA which proposes to encroach into the landward 50 feet of the 100 foot buffer as permitted under Section G.3, subsection c.2 of this Article, and causes no more than 5,000 square feet of land disturbance. A minor assessment must demonstrate that the undisturbed buffer area, enhanced vegetative plantings and necessary best management practices will result in removal of no less than 75 percent of sediments and 40 percent of nutrients from post-development stormwater runoff and that will retard runoff, prevent erosion and filter non-point source pollution the equivalent of the full undisturbed 100-foot buffer area. A minor assessment shall include a site drawing to scale which shows the following:

1. Location of the components of the RPA, including the 100 foot buffer area and the location of any water body with perennial flow;
2. Location and nature of the proposed encroachment into the buffer area, including: type of paving materials; areas of clearing or grading; location of any structures, drives, or other impervious cover; and sewage disposal systems or reserve drainfield sites;
3. Type and location of proposed best management practices to mitigate the proposed encroachment.
4. Location of existing vegetation onsite, including number and type of trees and other vegetation to be removed in the buffer to accommodate the encroachment or modification;
5. Re-vegetation plan that supplements the existing buffer vegetation in a manner that provides for pollutant removal, erosion and runoff control.

4. Major Water Quality Impact Assessment

- a. A major water quality impact assessment pertains to land disturbance, redevelopment or development which:
1. proposes to disturb any portion of the seaward 50 feet of the 100 foot buffer area; or

2. proposes to disturb the landward 50 feet of the 100 foot buffer and which causes more than 5,000 square feet of land disturbance; or
 3. is proposed in the RMA and is deemed necessary by the Zoning Administrator.
- b. The following elements shall be included in the preparation and submission of a major water quality assessment. The information required in this section shall be considered a minimum, unless the Zoning Administrator determines that some of the elements are unnecessary due to the scope and nature of the proposed use and development of land.
1. All of the information required in a minor water quality impact assessment, as specified in Article 3.P, SectionH.3.
 2. A hydrogeological element that:
 - (a) Describes the existing topography, soils, hydrology and geology of the site and adjacent lands.
 - (b) Describes the impacts of the proposed development on topography, soils, hydrology and geology on the site and adjacent lands.
 - (c) Indicates the following:
 - (1) Disturbance or destruction of wetlands and justification for such action;
 - (2) Disruptions or reductions in the supply of water to wetland, streams, lakes, rivers or other water bodies;
 - (3) Disruptions to existing hydrology including wetland and stream circulation patterns;
 - (4) Source location and description of proposed fill material;
 - (5) Location of dredge material and location of dumping area for such material;

- (6) Location of impacts on shellfish beds, submerged aquatic vegetation, and fish spawning areas;
 - (7) Estimation of pre- and post-development pollutant loads in runoff;
 - (8) Estimation of percent increase in impervious surface on site and type(s) of surfacing materials used;
 - (9) Percent of site to be cleared for project;
 - (10) Anticipated duration and phasing schedule of construction project;
 - (11) Listing of all requisite permits from all applicable agencies necessary to develop project.
 - (d) Describes the proposed mitigation measures for the potential hydrogeological impacts. Potential mitigation measures include:
 - (1) Proposed erosion and sediment control concepts; concepts may include minimizing the extent of the cleared area, perimeter controls, reduction of runoff velocities, measures to stabilize disturbed area, schedule and personnel for site inspection;
 - (2) Proposed stormwater management system;
 - (3) Creation of wetlands to replace those lost;
 - (4) Minimizing cut and fill.
3. A landscape element that:
- (a) Identifies and delineates the location of all significant plant material on site, including all trees over two (2) inches or greater diameter at breast height or. Where there are groups of trees, stands may be outlines.

- (b) Describes the impacts the development or use will have on the existing vegetation. Information should include:
 - (1) General limits of clearing, based on all anticipated improvements, including buildings, drives, and utilities;
 - (2) Clear delineation of all trees which will be removed;
 - (3) Description of plant species to be disturbed or removed.
 - (c) Describes the potential measures for mitigation. Possible mitigation measures include:
 - (1) Replanting schedule for trees and other significant vegetation removed for construction, including a list of possible plants and trees to be used;
 - (2) Demonstration that the design of the plan will preserve to the greatest extent possible any significant trees and vegetation on the site and will provide maximum erosion control and overland flow benefits from such vegetation.
 - (3) Demonstration that indigenous plants are to be used to the greatest extent possible.
4. A wastewater element, where applicable, that:
- (a) Includes calculations and locations of anticipated drainfield or wastewater irrigation areas;
 - (b) Provides justification for sewer line locations in environmentally-sensitive areas, where applicable, and describes construction techniques and standards;
 - (c) Discusses any proposed on-site collection and treatment systems, their treatment levels, and impacts on receiving watercourses.

- (d) Describes the potential impacts of the proposed wastewater systems, including the proposed mitigative measures for these impacts.
 - 5. Identification of the existing characteristics and conditions of sensitive lands included as components of Chesapeake Bay Preservation Areas, as defined in this Ordinance.
 - 6. Identification of the natural processes and ecological relationships inherent in the site, and an assessment of the impact of the proposed use and development of land on these processes and relationships.
5. Submission and review requirements shall be provided and conducted pursuant to Article 11 of this Ordinance or Article 4 of the Subdivision Ordinance.
6. Evaluation Procedure
- a. Upon the completed review of a minor water quality impact assessment, the Zoning Administrator will determine if any proposed modification or reduction to the buffer area is consistent with the provisions of Article 3.P, will make a finding based upon the following criteria, and will provide the finding to the Planning Commission pursuant to Article 11 of this Ordinance or Article 4 of the Subdivision Ordinance:
 - 1. The necessity of the proposed encroachment and the ability to place improvements elsewhere on the site to avoid disturbance of the buffer area;
 - 2. Impervious surface is minimized;
 - 3. Proposed best management practices, where required, achieve the requisite reductions in pollutant loadings;
 - 4. The development, as proposed, meets the purpose and intent of this Ordinance;
 - 5. The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, will not result in a significant degradation of water quality.

6. Proposed mitigation measures result in minimal disturbance to all components of the RPA.
- b. Upon the completed review of a major water quality impact assessment, the Zoning Administrator will determine if the proposed development is consistent with the provisions of Article 3.P, will make a finding based upon the following criteria, and will provide the finding to the Planning Commission pursuant to Article 11 of this Ordinance or Article 4 of the Subdivision Ordinance:
1. Within any RPA, the proposed development is water-dependent;
 2. The disturbance of any wetlands will be minimized;
 3. The development will not result in significant disruption of the hydrology of the site;
 4. The development will not result in significant degradation to aquatic vegetation or life;
 5. The development will not result in unnecessary destruction of plant materials on site;
 6. Proposed erosion and sediment control concepts are adequate to achieve the reductions in runoff and prevent off-site sedimentation;
 7. Proposed stormwater management concepts are adequate to control the stormwater runoff to achieve the required performance standard for pollutant control;
 8. Proposed revegetation of disturbed areas will provide optimum erosion and sediment control benefits;
 9. The design and location of any proposed drainfield will be in accordance with the requirements of Article 3.P, Section G.
 10. The development, as proposed, is consistent with the purpose and intent of the Preservation Area district;

11. The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, will not result in a significant degradation of water quality.
- c. The Zoning Administrator shall require additional mitigation where potential impacts have not been adequately addressed. Evaluation of mitigation measures will be made by the Zoning Administrator based on the criteria listed above in Section H.6.b.
- d. The Zoning Administrator shall find the proposal to be inconsistent with the purpose and intent of this Ordinance when the impacts created by the proposal cannot be mitigated. Evaluation of the impacts will be made by the Zoning Administrator based on the criteria listed in Section H.6.b.

Revision Reference: Ord. of 4/6/04

I. Administration and Enforcement

1. Enforcement

- a. It shall be the duty of the Zoning Administrator and such deputies as are appointed by him to enforce the provisions of this Ordinance and to refuse to issue any permit for any building, or for any development or redevelopment of any land which would violate any of the provisions of said Ordinance. It shall also be the duty of all officers and employees of the Town to assist the Zoning Administrator by reporting to him any seeming violation in development or redevelopment or redevelopment within the Town of Smithfield.

2. Plan of Development Requirements

- a. For the purpose of compliance with the Chesapeake Bay Preservation Act and its Regulations, the processing of development proposals through Article 11 of this Ordinance or Article 4 of the Subdivision Ordinance, as appropriate, constitutes the required Plan of Development Review Process. More specifically, the Plan of Development Review Process involves:
 1. A site plan in accordance with Article 11 of this Ordinance or a subdivision plat in accordance with Article 4 of the Subdivision Ordinance.

2. An environmental site assessment
 - (a) The environmental site assessment shall be drawn to scale and clearly delineate the following environmental features:
 - (1) Tidal wetlands;
 - (2) Tidal shores;
 - (3) Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow;
 - (4) A 100 foot buffer area located adjacent to and landward of the components listed in subsections a. through c. above, and along both sides of any water body with perennial flow;
 - (5) Other lands and other sensitive environmental features as determined by the Zoning Administrator.
 - (b) Wetlands delineations shall be performed consistent with the procedures specified in the Federal Manual for Identifying and Delineation Jurisdictional Wetlands, 1987.
 - (c) The environmental site assessment shall delineate the site-specific geographic extent of the RPA.
 - (d) The environmental site assessment shall be drawn at the same scale as the preliminary site plan or subdivision plat, and shall be certified as complete and accurate by a professional landscape architect and/or engineer or a certified land surveyor. This requirement may be waived by the Zoning Administrator when the proposed use or development would result in less than 5,000 square feet of disturbed area.
3. A landscaping plan in accordance with Article 9.
4. A stormwater management plan in accordance to the Design and Constructions Manual.

5. An erosion and sediment control plan in accordance with the provisions of Article 11.A.

3. Use Exemptions

Exemptions may be issued by the Zoning Administrator upon receipt of an application and a determination that the provisions listed herein will be complied with.

- a. Exemptions for Utilities, Railroads, and Public Roads

1. Construction, installation, and maintenance of water, sewer, natural gas, and underground telecommunications and cable television lines owned, permitted, or both, by a local government or regional service authority shall be exempt from the Overlay District provided that:
 - (a) To the degree possible, the location of such utilities and facilities shall be outside RPAs;
 - (b) No more land shall be disturbed than is necessary to provide for the proposed utility installation;
 - (c) All construction, installation, and maintenance of such utilities and facilities shall be in compliance with all applicable state and federal requirements and permits and designed and conducted in a manner that protects water quality; and
 - (d) Any land disturbance exceeding an area of 2,500 square feet complies with Article 11.A.
2. Construction, installation, operation, and maintenance of electric, natural gas, fiber-optic, and telephone transmission lines, railroads, and public roads and their appurtenant structures in accordance with (i) regulations promulgated pursuant to the Erosion and Sediment Control Law (§ 10.1-560 et seq. of the Code of Virginia) and the Stormwater Management Act (§ 10.1-603.1 et seq. of the Code of Virginia), (ii) An erosion and sediment control plan and a stormwater management plan approved by the Virginia Department of Conservation and Recreation, or (iii) local water quality protection criteria at least as stringent as the above state

requirements will be deemed to constitute compliance with this chapter. The exemption of public roads is further conditioned on the following:

- (a) Optimization of the road alignment and design, consistent with other applicable requirements, to prevent or otherwise minimize encroachment in the Resource Protection Area and adverse effects on water quality; and
- (b) All public roads as defined in 9 VAC 10-20-40.

b. Exemptions for Silvicultural Activities

- 1. Silvicultural activities are exempt from the requirements of this Ordinance provided that silvicultural operations adhere to water quality protection procedures prescribed by the Department of Forestry in its "Best Management Practices Handbook for Forestry Operations".

c. Exemptions in Resource Protection Areas

- 1. The following land disturbances in Resource Protection Areas may be exempted from the Chesapeake Bay Preservation Overlay District: (i) water wells; (ii) passive recreation facilities such as boardwalks, trails, and pathways; and (iii) historic preservation and archaeological activities, provided that it is demonstrated to the satisfaction of the Zoning Administrator that:
 - (a) Any required permits, except those to which this exemption specifically applies, shall have been issued;
 - (b) Sufficient and reasonable proof is submitted that the intended use will not deteriorate water quality;
 - (c) The intended use does not conflict with nearby planned or approved uses; and
 - (d) Any land disturbance exceeding an area of 2,500 square feet shall comply with Article 11.A.

d. Nonconforming uses and noncomplying structures

1. The lawful use of a building or structure which existed on September 4, 1990 which is not in conformity with the provisions of the Overlay District may be continued in accordance with Article 7, Nonconforming Uses, of the Zoning Ordinance.
2. No change or expansion of use shall be allowed with the exception that:
 - (a) The Zoning Administrator may grant a nonconforming use and/or waiver for structures on legal nonconforming lots or parcels to provide for remodeling and alterations to such nonconforming structures provided that:
 - (1) There will be no increase in nonpoint source pollution load;
 - (2) Any development or land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirement of this Article.
 - (b) An application for a nonconforming use and/or waiver shall include the following information:
 - (1) Name and address of applicant and property owner;
 - (2) Legal description of the property and type of proposed use and development;
 - (3) A survey or plat showing the dimensions of the lot or parcel, location of buildings and proposed additions relative to the lot lines, and boundary of the RPA;
 - (4) Location and description of any existing private water supply or sewage system.
 - (c) A nonconforming use and development waiver shall become null and void twelve (12) months from the date issued if no substantial work has commenced.

- (d) An application for the expansion of a nonconforming principal structure may be approved by the Zoning Administrator through an administrative review process provided that the following findings are made:
 - (1) The request for the waiver is the minimum necessary to afford relief;
 - (2) Granting the waiver will not confer upon the applicant any specific privileges that are denied by this Article to other property owners in similar situations;
 - (3) The waiver is in harmony with the purpose and intent of this Article and does not result in water quality degradation;
 - (4) The waiver is not based on conditions or circumstances that are self-created or self-imposed;
 - (5) Reasonable and appropriate conditions are imposed, as warranted, that will prevent the waiver from causing a degradation of water quality;
 - (6) Other findings, as appropriate and required by the Town of Smithfield are met; and
 - (7) In no case shall this provision apply to accessory structures.

4. Exceptions

- a. A request for an exception to the requirements of the Chesapeake Bay Preservation Overlay District shall be made in writing to the Planning Commission. It shall identify the impacts of the proposed exception on water quality and on lands within the RPA, RMA or IDA through the performance of a water quality impact assessment in accordance with Article 3.P, Section F.2 and Section H.

- b. The Planning Commission shall review the request for an exception and the water quality impact assessment (if required) and may grant the exception in accordance with Article 3.P, Section F.2 with such conditions and safeguards as deemed necessary to further the purpose and intent of this Ordinance if the Zoning Administrator finds:
 - 1. Granting the exception will not confer upon the applicant any special privileges that are denied by this Ordinance to other property owners in the Overlay District;
 - 2. The exception request is not based upon conditions or circumstances that are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or non-conforming that are related to adjacent parcels;
 - 3. The exception request is the minimum necessary to afford relief;
 - 4. The exception request will be in harmony with the purpose and intent of the Overlay District, and not injurious to the neighborhood or otherwise detrimental to the public welfare, and not of substantial detriment to water quality; and
 - 5. Reasonable and appropriate conditions are imposed which will prevent the exception request from causing a degradation of water quality.
- c. The Town of Smithfield shall notify the affected public of any such exception requests and shall consider these requests in a public hearing in accordance with § 15.2-2204 of the Code of Virginia, except that only one hearing shall be required.

Revision References: Ord. of 4/6/04; 2/1/05;12/6/05

J. Appeals

- 1. Appeals of a decision of the Planning and Zoning Administrator in the administration of this article shall be to the Planning Commission as provided in Section 15.2-2311 (1997) of the Code of Virginia. The Planning Commission shall consider the Water Quality Impact Assessment and rationale of the Zoning Administrator in determining harmony with the intended spirit and purpose of this Ordinance.

2. Appeals of a decision of the Planning Commission by the applicant or a party in interest regarding a site plan, waiver, variation or substitution shall be to the Town Council, provided that such appeal is filed with the Town Manager within ten (10) calendar days of the decision being appealed. The appeal shall be placed on the agenda of the Town Council at the next regular meeting. The Town Council may reverse or affirm, wholly or partly, or may modify the decision of the Planning Commission.

K. Additional Definitions

1. Refer to Article 13, Definitions for general definitions of terms described herein.